

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Greenville County

Honorable G. Thomas Cooper, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JOHN ANTHONY DUCKETT,

APPELLANT

APPELLATE CASE NO 2017-002189

ANDERS BRIEF OF APPELLANT

LANELLE CANTEY DURANT
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

ORIGINAL

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SC Court of Appeals

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STATEMENT OF ISSUE ON APPEAL

Did the trial court err in denying Appellant Duckett's motion to suppress the drugs based on breaks in the chain of custody when the clerk who received the drugs into the Property and Evidence room initially, Cindy Witherspoon, did not testify; the chemist checked the drugs out of the evidence room on July 2 and did not return them until July 7; and the clerk, Melanie Watson, who signed the drugs out to the chemist did not testify?

STATEMENT OF THE CASE

On July 26, 2016, the Greenville County Grand Jury indicted John Duckett on the charges of distribution of heroin and distribution of cocaine base (crack). On October 9-10, 2017, Appellant Duckett proceeded to trial before the Honorable G. Thomas Cooper and a jury. Duckett was represented by Dorothy A. Manigault, and the state was represented by Howard Lawrence Steinberg. R. 1.

The jury found Appellant Duckett guilty of both charges as indicted. R. 170, ll. 5 – 20. The judge sentenced Duckett to ten years on each charge to run concurrent. R. 180, ll. 3 – 18. Duckett's trial attorney filed a notice of appeal. This appeal follows.

STANDARD OF REVIEW

“The admission of evidence is within the discretion of the trial court and will not be reversed absent an abuse of discretion.” State v. Hatcher, 392 S.C. 86, 91, 708 S.E.2d 750, 753 (2011) (quoting State v. Pagan, 369 S.C. 201, 208, 631 S.E.2d 262, 265 (2006)). “An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law.” Id.; see also State v. Brockmeyer, 406 S.C. 324, 340, 751 S.E.2d 645, 653 (2013).

ARGUMENT

The trial court erred in denying Appellant Duckett's motion to suppress the drugs based on breaks in the chain of custody when the clerk who received the drugs into the Property and Evidence room initially, Cindy Witherspoon, did not testify; the chemist checked the drugs out of the evidence room on July 2 and did not return them until July 7; and the clerk, Melanie Watson, who signed the drugs out to the chemist did not testify.

Relevant Facts

Deputy Brad Grice was acting as an undercover officer in June 2015 for the Sheriff's Office in Greenville County. On June 11, 2015, Deputy Grice contacted Appellant Duckett via text message and asked to buy \$150 worth of heroin and \$40 worth of crack cocaine from Duckett. Deputy Grice was fitted with an audio wire for the transaction. Deputy Grice was familiar with Duckett from previous contact. R. 68, ll. 1 – R. 69, ll. 25; R. 76, ll. 1 – 25.

Duckett told Grice to meet him at the Bi-Lo grocery on June 11, 2015 which Deputy Grice did. Other officers were there also maintaining surveillance for Grice's protection. R. 70, ll. 1 – 25. Deputy Grice met Duckett on the Mexican food aisle where Duckett placed the drugs on one of the shelves and Deputy Grice handed Duckett the \$190. When Deputy Grice checked the drugs, he found a clear plastic baggie filled with a white substance, and two little white rocks. R. 72, ll. 1 – R. 74, ll. 21.

Deputy Grice got in his car and delivered the drugs to Deputy Chris Fletcher who was at the home of Duckett where a search warrant was being executed. R. 75, ll. 1 – 20; R. 94, ll. 1 -12. Deputy Fletcher's job was to "scribe" the search warrant and document all items found during the search. Then he delivered the evidence to the Property and Evidence Room at the Law Enforcement Center. R. 94, ll. 13 – R. 96, ll. 8.

Deputy John Williams was waiting outside the Bi-Lo listening for a signal and description of Duckett in order to stop him. Once Deputy Williams received the information, he recognized Duckett leaving the Bi-Lo and arrested him. Deputy Williams then took Duckett to Duckett's home on Miracle Street where the search warrant was being executed. Deputy Williams delivered Duckett to Deputy Bastoni, the case officer. R. 87, ll. 1 – R. 89, ll. 23.

Deputy Jonathan Bastoni was the case officer and in charge of the plan and executing the search. Once Duckett was arrested, Deputy Bastoni went to Duckett's home on Miracle Street where the search warrant was executed. When Duckett was brought to the house, Deputy Bastoni searched Duckett. He found on Duckett in his back pocket a small white, rock-like substance and a small blue bag containing a brownish powder substance. Deputy Bastoni gave these to Deputy Fletcher for the evidence room. R. 57, ll. 12 – R. 58, ll. 25; R. 59, ll. 1 – R. 62, ll. 11.

On July 16, 2016, the Greenville County Grand Jury indicted Appellant Duckett on the charges of distribution of heroin and distribution of crack. On October 9-10, 2016, Duckett proceeded to trial. In a pretrial motion, defense counsel made a motion to suppress the drugs based on the point that the drugs were checked out from the Evidence room and not returned for five days. They were checked out from July 2 and returned July 7. R. 7, ll. 2 – R. 8, ll. 19; R. 16, ll. 24 – R. 17, ll. 18.

The solicitor responded that the drugs were checked out to the chemist, Sean Collins, during that time period. He kept them in the crime lab. The judge decided to withhold ruling on the motion to suppress until after the chemist, Sean Collins, testified. R. 17, ll. 17, ll. 19 – R. 18, ll. 13.

During the testimony of Deputy Bastoni, who was responsible for the execution of the search warrant, he explained that the chain of custody in this case was a thirteen-page document. It consisted of two parts. One part was the "actual chain" that reported who checked out items or

placed items in evidence. The second part was a list of items included in Duckett's case. R. 64, ll. 1 – 10.

Sean Collins testified first in camera concerning his role in this case in order for the judge to make a decision on the motion to suppress the drugs. Collins testified in the proffer that he did sign the drugs out on July 2, 2015. He was not sure who he signed them out from. The solicitor asked who was Melanie Watson as it appeared that he signed the drugs out from her. Collins explained that Watson was a clerk in the Property and Evidence Room and just was involved in the storage and security of the evidence. Collins returned the drugs and signed them back into the Property and Evidence Room on July 7, 2015.

On cross-examination Collins stated that the drugs were stored in his locker in the laboratory during July 2-7, 2015. The locker had a combination lock that only he knew. R. 105, ll. 11 – R. 106, ll. 25. Collins said that it was common practice that when he returned the drugs to the Property and Evidence Room that he just handed them to the clerk who logged them in on the computer. The judge denied defense counsel's motion to suppress the drugs. R. 108, ll. 2 - 16.

During his testimony, Collins testified regarding the amount of drugs. Item JB-6 was found on Duckett and was .11 grams of cocaine base (crack). Item JB-7 was also found on Duckett and was .05 grams of heroin. Drugs from the undercover transaction were .20 grams of cocaine base (Item JB-9) and .34 grams of heroin (Item JB-10). R. 113, ll. 10 – R. 114, ll. 24; R. 63, ll. 1 – R. 65, ll. 22. When the drugs were introduced into evidence, defense counsel was asked if any objections. Counsel replied: "just the court note my previous objection that you already ruled on." R. 115, ll. 1 – 7.

Kara Bennick was the supervisor of the Property and Evidence Room. She testified that Cindy Witherspoon and Melanie Watson both worked in the Property and Evidence Room. Cindy

Witherspoon signed in on June 11, 2015 State's Exhibit 5 which was the chain of custody documents. R. 118, ll. 5 – R. 119, ll. 5; R. 64, ll. 1 – 10. Melanie Watson was a clerk in the evidence room. Ms. Bennick stated that she signed the drugs back in on July 7, 2015. R. 119, ll. 6 – 15. Ms. Bennick confirmed that neither she, nor Melanie Watson nor Cindy Witherspoon were involved in handling the evidence other than securing it when it was already inside plastic bags. R. 119, ll. 20 – 24.

At the close of the evidence, when the judge was discussing closing arguments with the attorneys, Appellant Duckett told the judge that he wanted to do his closing argument. Duckett explained that neither Cindy Witherspoon nor Melanie Watson testified and both were required to testify to complete the chain of custody. He wanted the argue that before the jury. The judge denied his request because Duckett was trying to argue more facts than were presented. R. 137, ll. 1 – R. 139, ll. 25.

The jury returned verdicts of guilty on both charges. R. 170, ll. 1 – 15. The judge sentenced Duckett to ten years on both charges to run concurrent. R. 180, ll. 3 – 18.

Discussion

In State v. Pulley, 2018 WL 2709478 (Filed June 6, 2018), the Supreme Court held that a party offering into evidence fungible items such as drugs or blood samples must establish a complete chain of custody as far as practicable. Citing State v. Hatcher, 392 S.C. 86, 91, 708 S.E.2d 750, 753 (2011). The Court reversed Pulley's case because the state failed to establish a complete chain of custody.

In Pulley's case, the state presented "confusing and contradictory" evidence in trying to establish the chain of custody. The state could not document whether Officer Craven or Officer Brewer delivered the drugs from the scene to the patrol office. The state even stipulated that there

was no evidence as to what happened to the cocaine from the time it was on Officer Brewer's car and when Officer Craven got possession of them.

In State v. Sweet, 374 S.C. 1, 6, 647 S.E.2d 202, 205 (2007), the Supreme Court held that the identity of individuals who acquired the evidence and what was done with the evidence between the taking and the analysis must not be left to conjecture.

In State v. Taylor, 360 S.C. 18, 598 S.E.2d 735, 739 (Ct. App. 2004), the Court of Appeals held that if the identity of each person in the chain handling the evidence is established, and the manner of handling is reasonably demonstrated, no abuse of discretion is shown in admission of such evidence, absent proof of tampering, bad faith, or ill-motive.

In Duckett's case, two significant people in the chain of custody were not called to testify. Neither Melanie Watson, who signed the drugs out to the chemist, Sean Collins, nor Cindy Witherspoon, who received the drugs initially into the Property and Evidence Room, were called to testify. Because the chemist kept the drugs for five days, it was important for Melanie Watson to testify to confirm under oath when she signed the drugs out to Sean Collins.

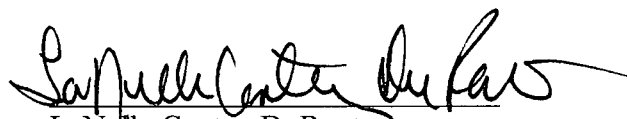
Cindy Witherspoon's testimony would have been significant to confirm when she received the drugs into the Evidence room. Only the supervisor of both of these two people, Kara Bennick, testified as to what they did. There was no testimony that Ms. Bennick was present when Ms. Witherspoon received the drugs nor when Ms. Wilson signed them out to the chemist.

The chemist, Sean Collins, testified that he kept the drugs in his own locker for the five days except when he was testing them. There was no corroboration by anyone that his locker had a combination lock that only he knew.

The trial court erred in admitting the drugs when the chain of custody was not complete.

CONCLUSION

Based on the above, Appellant's convictions should be reversed, and the case remanded for a new trial.

A handwritten signature in black ink, appearing to read 'LaNelle Cantey DuRant', written over a horizontal line.

LaNelle Cantey DuRant
Appellate Defender

ATTORNEY FOR APPELLANT

This 1st day of August, 2018.

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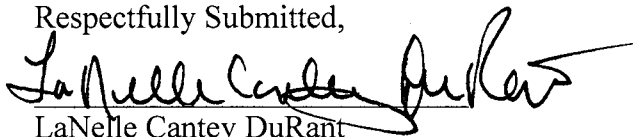
PETITION TO BE RELIEVED AS COUNSEL

Counsel for John Anthony Duckett states:

1. She is Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent appellant.
2. She has reviewed the record of appellant's trial before Judge G. Thomas Cooper, which was held on October 9 - 10, 2017, and, in her opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. She has, pursuant to Anders v. California, 386 U.S. 738, 87 S.Ct. 1396 (1967), briefed an arguable legal issue which arose during the course of the trial.

WHEREFORE, She asks the Court to relieve her as counsel for John Anthony Duckett.

Respectfully Submitted,



LaNelle Cantey DuRant

Appellate Defender

ATTORNEY FOR APPELLANT

This 1st day of August, 2018.

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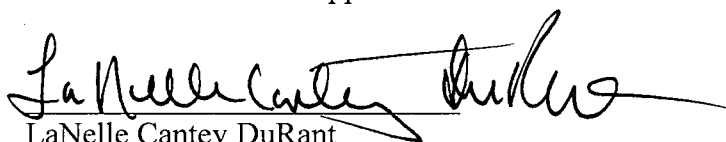
**DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

Appellant proposes the following be included in the Record on Appeal:

- (1) True-billed indictment(s):
- (2) Sentencing Sheets
- (3) Trial transcript October 9-10, 2017
- (4) State's Exhibit 5: Chain of Custody Report (13 pages)

I certify that this designation contains no matter which is irrelevant to this appeal.

August 1, 2018


LaNelle Cantey DuRant
Appellate Defender

South Carolina Commission on Indigent
Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Anders Brief of Appellant complies with Rule 211(b), SCACR, and the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

August 1, 2018.


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Appellate Defender

South Carolina Commission on Indigent
Defense
Division of Appellate Defense
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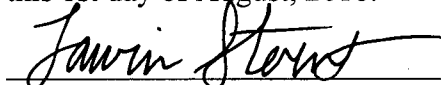
CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the Anders Brief of Appellant and Designation of Matter in the above referenced case has been served upon J. Benjamin Aplin, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the Anders Brief of Appellant and Designation of Matter have been served on John Anthony Duckett, #270743, at Wateree River Correctional Institution, PO Box 189, Rembert, SC 29128-0189, this 1st day of August, 2018.



LaNelle Cantey DuRant
Appellate Defender
ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 1st day of August, 2018.

 (L.S)
Notary Public for South Carolina
My Commission Expires: July 5, 2027.

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